REMARKS

Claims 1-31 are currently pending in the present application, with claims 1, 3, and 10-11 being written in independent form. Claims 3 and 20-23 have been amended for clarity. Non-elected claims 1-2, 5-19, and 24-31 have been withdrawn from consideration. Thus, no new matter has been introduced into the claims.

Information Disclosure Statements

Applicants thank the Examiner for considering the information disclosure statements filed on March 17, 2006, September 12, 2006, and November 20, 2006. However, Applicants note that a corrected information disclosure statement was also filed on December 7, 2006. Accordingly, Applicants respectfully request the Examiner to indicate in the next action that the information disclosure statement filed on December 7, 2006 has been considered.

Restriction Requirement

Applicants affirm the election of Group II, claims 3-4 and 20-23, without traverse.

Double Patenting

Claims 3-4 and 22-23 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9-11 of copending and commonly-assigned U.S. Application No. 11/540,478. Because the present claims and the claims for U.S. Application No. 11/540,478 are still undergoing prosecution (and, thus, subject to change so as to render this rejection moot), Applicants respectfully request the Examiner to hold this rejection in abeyance.

Claims 3-4 and 21-23 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of copending and commonly-assigned U.S. Application No. 10/593,706. Because the present claims and the claims for U.S. Application No. 10/593,706 are still undergoing prosecution (and, thus, subject to change so as to render this rejection moot), Applicants respectfully request the Examiner to hold this rejection in abeyance.

Claims 3-4 and 22-23 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 and 17 of copending and commonly-assigned U.S. Application No. 10/577,355. Because the present claims and the claims for U.S. Application No. 10/577,355 are still undergoing prosecution (and, thus, subject to change so as to render this rejection moot), Applicants respectfully request the Examiner to hold this rejection in abeyance.

Claim Rejections under 35 U.S.C. § 103 (Whitmore)

Claims 3-4 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,417,425 (Whitmore). Applicants respectfully traverse this rejection for the reasons below.

As a preliminary matter, Whitmore fails to disclose or suggest that "**90%** by weight or more of the particles have a diameter less than 850μm but **not less than 150μm**," as recited by independent claim 3. Rather, Whitmore explicitly teaches that "the superabsorbent particle size distribution should be between 10 and 300 microns,

preferably between 45 and 150 microns."[1] Thus, a substantial portion of the general range taught by Whitmore will *not* even fall within the parameters of claim 1,[2] much less the preferred range taught by Whitmore.[3] Thus, "**90%** by weight or more of the particles" of Whitmore will *not* "have a diameter less than 850μm but **not less than 150μm**," as recited by independent claim 3.

Furthermore, the Examiner relies on col. 17, ln. 40-44, of Whitmore for the teaching that "[w]hen in the form of particles or spheres, it may be desired that the particles or spheres have a maximum cross-sectional dimension of from about 10 micrometers to about 2000 micrometers, preferably from about 60 micrometers to about 1000 micrometers." Although the ranges disclosed by Whitmore appear to encompass the claimed range of claim 3, it should be noted that the disclosed ranges merely pertain to the "high-absorbency material" of Whitmore, which is *distinct* from the claimed "particles" of claim 3 and, thus, would *not* read on all the limitations therein.[4]

For at least the reasons above, a *prima facie* case of obviousness cannot be established with regard to claim 3. Consequently, a *prima facie* case of obviousness cannot be established with regard to claims 4 and 20, at least by virtue of their dependency on claim 3. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the above rejection.

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1 *Whitmore*: col. 7, ln. 55-58.

2 Particles sizes of Whitmore between 10-149 microns (of the 10-300 micron general range) will not be 150 μm or more.

3 Particles sizes of Whitmore between 45-149 microns (of the 45-150 micron *preferred* range) will not be 150 μm or more.

4 *Whitmore*: col. 17, ln. 14-58.

Claim Rejections under 35 U.S.C. § 103 (Nakashima)

Claims 3-4 and 20-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 02/100451 (Nakashima). Applicants respectfully traverse this rejection for the reasons below.

As a preliminary matter, Nakashima fails to disclose or suggest that "a logarithmic standard deviation (σ ζ) of the particle size distribution is in a range of **0.25 to 0.45**," as recited by independent claim 3. Rather Nakashima explicitly teaches that the particles include "at least two members (*favorably* at least three members, *more favorably* four members)."[5] Thus, the particle size distribution of Nakashima will *not* have the logarithmic standard deviation of independent claim 3.

Furthermore, Nakashima fails to disclose or suggest that the "CRCs for 0.9 wt % saline is not less than 15 g/g but **less than 29 g/g**," as recited by independent claim 3. Rather, Nakashima explicitly teaches that the CRC for 0.90 weight % saline is "*not* less than 31 g/g."[6] In fact, Nakashima teaches that "[t]he CRC is *more favorably not* less than 32 g/g, *still more favorably not* less than 33 g/g, *yet still more favorably not* less than 34 g/g, *particularly favorably not* less than 35 g/g, *more particularly favorably not* less than 36 g/g."[7] Thus, Nakashima actually *teaches away* from the CRCs value of independent claim 3.

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5 *Nakashima*: p. 43, ln. 3-12 (The "*at least* two members" (but "*more favorably* four members") are selected from the group consisting of: (1) particles having diameters "smaller than 850 um but not smaller than 600 um"; (2) particles having diameters "smaller than 600 um but not smaller than 500 um"; (3) particles having diameters "smaller than 500 um but not smaller than 300 um"; and (4) particles having diameters "smaller than 300 um but not smaller than 150 um.").

6 *Nakashima*: p. 7, ln. 19-20; p. 8, ln. 17-18; p. 9, ln. 15-16; p. 44, ln. 3-5; p. 46, ln. 16-17; p. 52, ln. 15-16; p. 53, ln. 12-13; p. 54, ln. 10-11.

7 *Nakashima*: p. 44, ln. 11-14.

The Examiner asserts that Nakashima teaches "a CRC of not less than 25.8 g/g."[8] However, it should be noted that the "25.8 g/g" value *merely* pertains to particles 13d, which (along with particles 13a-13c) are only *constituents* of the *overall* water-absorbing agent 13.[9] As a result, particles 13d are *distinct* from the claimed "particles" of claim 3 and, thus, would *not* read on all the limitations therein.

For at least the reasons above, a *prima facie* case of obviousness cannot be established with regard to claim 3. Consequently, a *prima facie* case of obviousness cannot be established with regard to claims 4 and 20-23, at least by virtue of their dependency on claim 3. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the above rejection.

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8 *Office Action (03/17/2009)*: p. 11, ln. 2-3.

9 *Nakashima*: p. 73, ln. 17 – p. 74, ln. 3; p. 87, Table 2, Example 13.

CONCLUSION

In view of the above, Applicants respectfully request the allowance of all the pending claims in the present application.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By _____

Donald J. Daley, Reg. No. 34,313
P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

DJD/ACC:clc:vrj
ACC